

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Section 63.71 Application to Discontinue	)	
Service of ACC Telecommunications, LLC	)	Comp. Pol. File No. 214
and ACC Telecommunications of Virginia,	)	
LLC	)	
	)	
	)	
	)	

**Order**

**Adopted: December 9, 2002**

**Released: December 9, 2002**

By the Wireline Competition Bureau:

**I. BACKGROUND**

1. On October 30, 2002, ACC Telecommunications, LLC and ACC Telecommunications of Virginia, LLC (collectively ACC), pursuant to 214(a) of the Communications Act of 1934, as amended,<sup>1</sup> and section 63.71 of the rules of the Federal Communications Commission (Commission),<sup>2</sup> filed a joint application with the Commission to discontinue its provision of facilities-based and resold service, intraLATA toll, interLATA switched access and jurisdictional private lines services, toll resale service and facilities-based and resold interexchange telecommunications service in the Albany and Rochester, New York markets (Application). In its application, ACC states that it plans to discontinue provision of these services in the specified markets 31 days after issuance of the Commission's Public Notice regarding the Application.

2. Subsequently, on November 8, 2002, the Wireline Competition Bureau released a Public Notice requesting comment on the application.<sup>3</sup> The Public Notice indicated that, under the Commission's rules, absent any determination otherwise by the Commission, the applicant would be eligible to discontinue service 31 days from the release of the Public Notice, in this case, on December 9, 2002.<sup>4</sup> On November 18, 2002, ACC filed a supplement to its application stating that in light of ACC's obligation to comply with the New York Mass Migration Guidelines,<sup>5</sup> ACC

---

<sup>1</sup> 47 U.S.C. § 214(a).

<sup>2</sup> 47 C.F.R. § 63.71.

<sup>3</sup> Comments Invited on ACC Telecommunications, LLC Application to Discontinue Domestic Telecommunications Service, *Public Notice*, DA 01-3101, Comp. Pol. File No. 614 (Nov. 8, 2002) (Public Notice).

<sup>4</sup> Public Notice at 2. *See* 47 CFR § 63.1(c).

<sup>5</sup> *See* Proceeding on Motion of the Commission to Examine the Migration of Customers between Local Carriers, *Order Adopting Mass Migration Guidelines*, Case No. 00-C-0188 (Dec. 4, 2001).

would not discontinue its provision of the above referenced telecommunications services in Albany and Rochester, New York until at least December 31, 2002. On November 22, 2002, the Public Service Commission of the State of New York (New York Commission) filed comments, in which it noted that ACC and the New York Commission had entered into an exit plan under New York's Mass Migration Guidelines, pursuant to which ACC would begin to discontinue service to its customers on December 31, 2002.<sup>6</sup> The New York Commission also stated that it would be conditioning ACC's authority to discontinue service to customers to which loss of service could jeopardize public safety, and noted that at least one major health care facility would be unable to migrate until at least mid-February, 2003.<sup>7</sup> The New York Commission indicated that ACC had agreed to provide service to this customer until February 10, 2003, and objected to the Commission granting ACC authority to discontinue service on December 9, 2002, and requested that the Commission issue an order requiring ACC to continue to serve customers until they had obtained service with other carriers. On November 6, 2002 the Adirondack Medical Center file a late filed comment noting that it required more time to migrate to another carrier but was working closely with ACC to ensure an orderly migration.<sup>8</sup> On December 6, 2002, ACC filed additional comments indicating that it was cooperating with the New York Commission and the Adirondack Medical Center to ensure that the Adirondack Medical Center's service would not be interrupted.<sup>9</sup>

## II. DISCUSSION

3. Section 214(a) of the Communications Act states that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."<sup>10</sup> The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service, an important aspect of the Commission's general obligation under the Communications Act to protect and promote the public interest.<sup>11</sup>

4. As an initial matter, we find that the minimal number of objections from consumers is persuasive evidence that ACC's application in large part satisfies our standard for discontinuance. We are presented in this case, however, with additional evidence that ACC and the New York Commission have entered into an exit plan under the New York Mass Migration Guidelines to ensure a smooth transition for all of ACC's customers. The Commission endeavors to work closely with the various state commissions in matters related to discontinuances of service and recognizes the significant interest that state commissions have in such matters. We further note that the New York Commission's requirements are not

---

<sup>6</sup> Letter from Lawrence G. Malone, General Counsel, Public Service Commission of the State of New York to Marlene H. Dortch, Secretary, Federal Communication Commission (Nov. 22, 2002) (New York Comment).

<sup>7</sup> New York Comment at 2.

<sup>8</sup> E-mail from Pat Fuge, Director of Plant Operations, Adirondack Medical Center to the Commission (Dec. 5, 2002) (Adirondack Medical Center Comments).

<sup>9</sup> E-mail from Steve Hamrick, Counsel for ACC to the Commission (Dec. 6, 2002) (ACC Additional Comments).

<sup>10</sup> 47 U.S.C. § 214(a).

<sup>11</sup> *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996* Report and Order, CC Docket No. 97-11; *Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report and Order, AAD File No. 98-43 14 FCC Rcd 11364, 11380 (1999).

inconsistent with our requirements. As we have previously noted, compliance with our discontinuance requirements should not be construed as in any way obviating or limiting a carrier's duty to comply with state discontinuance requirements.<sup>12</sup> Moreover, pursuant to section 63.71 of the Commission's rules,<sup>13</sup> although the Commission (or the Wireline Competition Bureau under delegated authority) may allow an applicant to discontinue service after 31 days, this process is by no means automatic. The 31-day period allows the Commission to determine whether affected customers will have a reasonable opportunity to obtain alternative service. Where, as in this case, only a minimal number of customers in New York filed comments, active participation by the state commission is an essential element of our full analysis of the discontinuation application.

5. In this case, the New York Commission and ACC filed comments in this proceeding indicating that they have reached an agreement under the New York Mass Migration Guidelines concerning the schedule under which ACC will discontinue service to its customers. The New York Commission has indicated that it is devoting particular attention to the ability of those of ACC's customers that provide services related to public health and safety. We also understand that the New York Commission, the Adirondack Medical Center and ACC are cooperating to determine a workable migration schedule for the services received by Adirondack Medical Center.<sup>14</sup> We thus find it appropriate to approve ACC's application to discontinue domestic telecommunications services in Albany and Rochester, New York conditioned, however, upon its compliance with the New York Mass Migration Guidelines. Accordingly, if

---

<sup>12</sup> *In the Matter of e.spire Application to Discontinue Domestic and International Telecommunications Services*, Order, Comp. Pol. File No. 592, DA 02-1911 (rel. Aug. 2, 2002)

<sup>13</sup> 47 C.F.R. § 63.71.

<sup>14</sup> ACC Additional Comments, Adirondack Medical Center Comments.

ACC fails to abide by its commitments to the New York Commission, the Commission may reverse this approval and commence an appropriate action against ACC.

### III. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, that pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, that the joint application of ACC Telecommunications, LLC and ACC Telecommunications of Virginia, LLC to discontinue domestic telecommunications services in Albany, New York and Rochester, New York IS GRANTED consistent with the terms of this Order.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.  
Bureau Chief  
Wireline Competition Bureau